under the head of "judicial notice" of the technical knowledge of the board as in the case of *Steenerson* v. *Great Northern Ry. Co., supra,* or as a "power and duty" of the court on review as urged by Mr. Wigmore the result is the same. Upon matters peculiarly within its knowledge the decision of the board should be final. It may well be supposed that the granting of an appeal was for the purpose of providing a convenient substitute for the separate action which a party injured would have to bring in case of fraud, oppression or arbitrary action of the board and that the authority to review was to extend only to those matters. Such seems to be the view taken by the Idaho court in *Raaf* v. *State Board of Medical Examiners, supra.* T. H. S.

WHAT ARE THE RIGHTS OF A PERSON UNDER A PROMISE TO DO THAT WHICH HE WAS ALREADY UNDER OBLIGATION TO DO?—This question is considered in the case of *Scanlon* v. *Northwood* (1907), — Mich. —, 110 N. W. Rep. 493, recently decided by the Supreme Court of Michigan. The plaintiff and defendant executed a written contract, according to the terms of which, the former agreed to do all the lathing, plastering and mason work on a house to be built for the latter, in consideration of five hundred dollars. Six months later the plaintiff informed the defendant that he could not afford to work any longer under the old contract. In the meantime two hundred seventy dollars had been paid to the plaintiff for work performed. Another writing was executed whereby, in consideration "of fear that the price..... viz., $500.00, would not be sufficient to compensate him (plaintiff), defendant agreed to pay plaintiff such sum of money after the contract price is exhausted, as will insure him after the payment of all help employed by him.....the usual or going day wages paid to others for performing like work." The plaintiff completed the work and sued the defendant for such compensation. *Held,* he could recover.

The judgment in this case represents one view concerning the theory of consideration. This theory is based, primarily, upon the fact, that mutual promises support one another; but in its essence it is deeper, and includes acts or forbearances which are exchanged for promises. Consideration as thus defined is broader and more logical than the standard definition, which is a benefit to the promisor or detriment to the promisee. Under this restricted definition it is impossible to hold, on the theory of consideration, that a promise of further consideration for the doing of that which one is already bound to do, is a valid contract. In this case there is no detriment to the promisee, since he is gaining the additional compensation, and there is no benefit to the promisor, since now he must expend more than he would have had to under the original contract.

Under the first theory, however, this is entirely possible and accords with reason and justice. If one is already under legal obligation to perform an act and a promise of further reward is offered, and on the faith of such promise, the obligation is performed, such action comes plainly within the

intent and purview of the meaning of consideration as first enunciated. Here there is an act on the part of the party performing, which he would not otherwise have done, and such act was performed on the faith of the fulfillment of the promise by the other party to the agreement.

Even under the theory of the principal case there is a well established exception. This exception comprises those cases in which a creditor accepts a less sum than is due him in discharge of the whole debt. A contract of this sort is based upon no consideration and is invalid. In a number of States, however, this has been changed by statute, and in some by court decisions.

Practically all the cases hold that if it is a case of voluntary recission of the old contract and that there is a mutuality as to such recission, then there is a sufficient consideration to hold the promisor. In this case there is a total abandonment of the old contract and a new one is substituted in its place. Some courts hold that the contract becomes binding on the substitution of a new one. One may base its argument on the fact of substitution; the other on that of recission. In effect, however, the two are the same.

Another theory has been promulgated by the case of *King* v. *Duluth, Missabe & Northern Ry. Co.*, 61 Minn. 482, 63 N. W. Rep. 1105. In this case the court holds "that where the refusal to perform and the promise to pay extra compensation for the performance of the contract *are one transaction*, and there are no exceptional circumstances making it equitable that an increased compensation should be demanded and paid" there is no consideration to support the promise. But the court, basing its reasoning on equitable principles, goes on to say, "where the party refusing to complete his contract does so by reason of some unforeseen and substantial difficulties in the performance of the contract, which were not known or anticipated by the parties when the contract was entered into, and which cast upon him an additional burden not contemplated by the parties, and the opposite party promises him extra pay or benefits if he will complete his contract, and he so promises, the promise to pay is supported by a valid consideration." This case so far as the writer has been able to discover stands alone in regard to the view taken. Cases which support the principle of the leading case are as follows: *Blodgett* v. *Foster*, 120 Mich. 392, 79 N. W. 625; *Goebel* v. *Linn*, 47 Mich. 489, 41 Am. Rep. 723, 11 N. W. Rep. 284; *Moore* v. *Locomotive Works*, 14 Mich. 265; *Courtenay* v. *Fuller*, 65 Me. 156; *Holmes* v. *Doane*, 9 Cush. 135; *Thomas* v. *Barnes*, 156 Mass. 581; other cases will be found in Vol. 12 HARVARD LAW REVIEW, 529. The following cases support the opposition: *Ayres* v. *Chicago Co.*, 52 Iowa 478; *Kenigsberger* v. *Wingate*, 31 Tex. 42, 98 Am. Dec. 512; *Easterly Harvesting Machine Co.* v. *Wesley Pringle et al.*, 41 Neb. 265, 59 N. W. Rep. 804; *Ford* v. *Crenshaw*, 11 Ky. (1 Litt.) 69; *Trundles' Administrator* v. *Riley*, 56 Ky. 396 (17 B. Mon.); *Gerson* v. *Slemons*, 30 Ark. 50; *Lingenfelder et al.* v. *Wainwright Brewing Co.*, 103 Mo. 578; *McCarty* v. *Hampton Building Association*, 61 Iowa 287. I. E. C.